

A-Engrossed
Senate Bill 118

Ordered by the Senate March 27
Including Senate Amendments dated March 27

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes Governor to declare abnormal disruption of market under specified circumstances. **Establishes timeline for automatic termination of declaration. Provides for extension by subsequent declarations.** Prohibits merchants and wholesalers from charging unconscionably excessive prices for essential consumer goods or services during declaration of abnormal disruption of market. **Exempts electric utilities and certain public utilities.** Punishes violation as unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to protection of consumers from unconscionably excessive prices; creating new provisions;
3 amending ORS 401.025 and 646.607; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) The Legislative Assembly finds that during an abnormal disruption of the**
6 **market, some merchants and wholesalers have taken unconscionable advantage of consum-**
7 **ers by charging grossly excessive prices for essential consumer goods and services.**

8 **(2) To prevent merchants and wholesalers from taking unconscionable advantage of**
9 **consumers during an abnormal disruption of the market, the Legislative Assembly declares**
10 **that the public interest requires that charging unconscionably excessive prices be prohibited**
11 **and made subject to regulation as an unlawful trade practice.**

12 **SECTION 2. Sections 3 and 4 of this 2007 Act are added to and made a part of ORS 401.015**
13 **to 401.105.**

14 **SECTION 3. (1) If the Governor determines that an abnormal disruption of the market**
15 **has occurred, the Governor may declare an abnormal disruption of the market by a procla-**
16 **mation, as part of a state of emergency declared under ORS 401.055, or both.**

17 **(2) The Governor's declaration of an abnormal disruption of the market under subsection**
18 **(1) of this section shall specify:**

19 **(a) The geographical area covered by the declaration. The area may be no larger than**
20 **necessary to effectively respond to the abnormal disruption of the market.**

21 **(b) The date and time at which the abnormal disruption of the market commenced. The**
22 **date of commencement of the abnormal disruption of the market may precede the date on**
23 **which the declaration is made.**

24 **(c) That the declaration will terminate automatically 30 days after the date on which the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 Governor makes the declaration unless the Governor extends the declaration in accordance
2 with paragraph (d) of this subsection or unless the Governor or the Legislative Assembly
3 terminates the declaration sooner.

4 (d) That the Governor may extend the declaration for additional 30-day periods by sub-
5 sequent declarations that the abnormal disruption of the market continues to exist.

6 (3) The Governor's declaration of an abnormal disruption of the market is subject to
7 termination:

8 (a) By the Governor when the Governor determines that an abnormal disruption of the
9 market no longer exists.

10 (b) At any time by joint resolution of the Legislative Assembly.

11 (c) Automatically 30 days after the date on which the Governor makes the declaration
12 unless the Governor or the Legislative Assembly terminates the declaration sooner. The
13 Governor may extend the declaration for subsequent 30-day periods by declaring for each
14 such extension that the abnormal disruption of the market continues to exist. An extension
15 the Governor declares in accordance with this paragraph also terminates 30 days after the
16 date on which the Governor declared the extension unless the Governor declares another
17 extension or unless the Governor or the Legislative Assembly terminates the extension
18 sooner.

19 **SECTION 4.** (1) As used in this section, the terms "merchant" and "wholesaler" do not
20 include a public body as that term is defined in ORS 174.109, a public utility as defined in ORS
21 757.005 (1)(a)(A) or an electric utility as defined in ORS 757.600.

22 (2) A merchant or wholesaler may not sell or offer to sell essential consumer goods or
23 services for an amount that represents an unconscionably excessive price during a declara-
24 tion of an abnormal disruption of the market under section 3 of this 2007 Act.

25 (3) It is a question of law whether a price is unconscionably excessive. Proof that a price
26 is unconscionably excessive may be shown by evidence that:

27 (a) The amount charged for essential consumer goods or services exceeds by 15 percent
28 or more the price at which the goods or services were sold or offered for sale by the mer-
29 chant or wholesaler in the usual course of business immediately prior to or during a decla-
30 ration of an abnormal disruption of the market; or

31 (b) The amount charged for the essential consumer goods or services exceeds by 15 per-
32 cent or more the price at which the same or similar consumer goods or services were readily
33 obtainable by other consumers in or near the geographical area covered by the declaration
34 of an abnormal disruption of the market.

35 (4) Evidence described in subsection (3) of this section constitutes prima facie proof of a
36 violation of this section. Evidence described in subsection (3) of this section is not prima
37 facie evidence of a violation of this section if the amount charged by the merchant or
38 wholesaler is:

39 (a) Attributable to additional costs imposed by the merchant's or wholesaler's suppliers
40 or necessarily incurred in procuring the essential consumer goods or services immediately
41 prior to or during the declaration of an abnormal disruption of the market; or

42 (b) The result of increased internal costs or expenses related to the declaration of an
43 abnormal disruption of the market or the result of increased costs unrelated to the decla-
44 ration of an abnormal disruption of the market.

45 **SECTION 5.** ORS 401.025 is amended to read:

1 401.025. As used in ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580, unless the
2 context requires otherwise:

3 (1) **“Abnormal disruption of the market” means any human created or natural event or**
4 **circumstance that causes essential consumer goods or services to be not readily available.**

5 [(1)] (2) “Beneficiary” has the meaning given that term in ORS 656.005.

6 [(2)] (3) “Commission” means the Seismic Safety Policy Advisory Commission established under
7 ORS 401.337.

8 [(3)] (4) “Emergency” includes any [*human caused*] **human created** or natural event or circum-
9 stance causing or threatening loss of life, injury to person or property, human suffering or financial
10 loss, and includes[, *but is not limited to, fire, explosion, flood, severe weather, drought, earthquake,*
11 *volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contam-*
12 *ination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants un-*
13 *manageable by the county, civil disturbance, riot, sabotage and war*] **a crisis influx of migrants**
14 **unmanageable by a county.**

15 [(4)] (5) “Emergency management agency” means an organization created and authorized under
16 ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to
17 provide for and assure the conduct and coordination of functions for comprehensive emergency
18 program management.

19 [(5)] (6) “Emergency program management” includes all the tasks and activities necessary to
20 provide, support and maintain the ability of the emergency services system to prevent or reduce the
21 impact of emergency or disaster conditions which includes, but is not limited to, coordinating de-
22 velopment of plans, procedures, policies, fiscal management, coordination with nongovernmental
23 agencies and organizations, providing for a coordinated communications and alert and notification
24 network and a public information system, personnel training and development and implementation
25 of exercises to routinely test the emergency services system.

26 [(6)] (7) “Emergency program manager” means the person administering the emergency man-
27 agement agency of a county or city.

28 [(7)] (8) “Emergency service agency” means an organization within a local government which
29 performs essential services for the public’s benefit prior to, during or following an emergency. This
30 includes, but is not limited to, organizational units within local governments, such as law enforce-
31 ment, fire control, health, medical and sanitation services, public works and engineering, public in-
32 formation and communications.

33 [(8)] (9) “Emergency service worker” means an individual who, under the direction of an emer-
34 gency service agency or emergency management agency, performs emergency services and:

35 (a) Is a registered volunteer or independently volunteers to serve without compensation and is
36 accepted by the Office of Emergency Management or the emergency management agency of a county
37 or city; or

38 (b) Is a member of the Oregon State Defense Force acting in support of the emergency services
39 system.

40 [(9)] (10) “Emergency services” includes those activities provided by state and local government
41 agencies with emergency operational responsibilities to prepare for and carry out any activity to
42 prevent, minimize, respond to or recover from an emergency. These activities include, without limi-
43 tation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or haz-
44 ardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health
45 and sanitation services, engineering and public works, search and rescue activities, warning and

1 public information, damage assessment, administration and fiscal management, and those measures
2 defined as “civil defense” in [section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 2252)]
3 **50 U.S.C. app. 2252.**

4 [(10)] (11) “Emergency services system” means that system composed of all agencies and or-
5 ganizations involved in the coordinated delivery of emergency services.

6 (12) “Essential consumer goods or services” means goods or services that:

7 (a) Are or may be bought or acquired primarily for personal, family or household pur-
8 poses, including but not limited to residential construction materials or labor, shelter for
9 payment such as a hotel room, food, water or petroleum products such as gasoline or diesel
10 fuel; and

11 (b) Are necessary for the health, safety or welfare of consumers.

12 (13) “Human created or natural event or circumstance” includes, but is not limited to,
13 fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic
14 activity, tsunamis or other oceanic phenomena, spills or releases of oil or hazardous material
15 as defined in ORS 466.605, contamination, utility or transportation emergencies, disease,
16 blight, infestation, civil disturbance, riot, sabotage, acts of terrorism or war.

17 [(11)] (14) “Injury” means any personal injury sustained by an emergency service worker by
18 accident, disease or infection arising out of and in the course of emergency services or death re-
19 sulting proximately from the performance of emergency services.

20 [(12)] (15) “Local government” means any governmental entity authorized by the laws of this
21 state.

22 [(13)] (16) “Major disaster” means any event defined as a “major disaster” under 42 U.S.C.
23 5122(2).

24 [(14)] (17) “Oregon emergency management plan” means the state emergency preparedness op-
25 erations and management plan. The Office of Emergency Management is responsible for coordinating
26 emergency planning with government agencies and private organizations, preparing the plan for the
27 Governor’s signature, and maintaining and updating the plan as necessary.

28 [(15)] (18) “Search and rescue” means the acts of searching for, rescuing or recovering, by
29 means of ground or marine activity, any person who is lost, injured or killed while out of doors.
30 However, “search and rescue” does not include air activity in conflict with the activities carried
31 out by the Oregon Department of Aviation.

32 [(16)] (19) “Sheriff” means the chief law enforcement officer of a county.

33 **SECTION 6.** ORS 646.607 is amended to read:

34 646.607. A person engages in an unlawful practice when in the course of the person’s business,
35 vocation or occupation the person:

36 (1) Employs any unconscionable tactic in connection with **the** sale, rental or other disposition
37 of real estate, goods or services, or collection or enforcement of an obligation; [or]

38 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon
39 request of the customer, fails to refund any money that has been received from the customer that
40 was for the purchase of the undelivered real estate, goods or services and that is not retained by
41 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not
42 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods
43 or services delivered to a customer; **or**

44 (3) **Violates section 4 of this 2007 Act.**

45 **SECTION 7.** (1) **Section 3 of this 2007 Act applies to events or circumstances that occur**

1 on or after the effective date of this 2007 Act.

2 (2) Section 4 of this 2007 Act and the amendments to ORS 646.607 by section 6 of this 2007
3 Act apply to sales or offers to sell essential consumer goods or services that are made on
4 or after the effective date of this 2007 Act.

5 (3) The remedies provided in section 4 of this 2007 Act and in the amendments to ORS
6 646.607 by section 6 of this 2007 Act are in addition to any other remedies that may exist
7 under the law.

8 SECTION 8. This 2007 Act being necessary for the immediate preservation of the public
9 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
10 on its passage.

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